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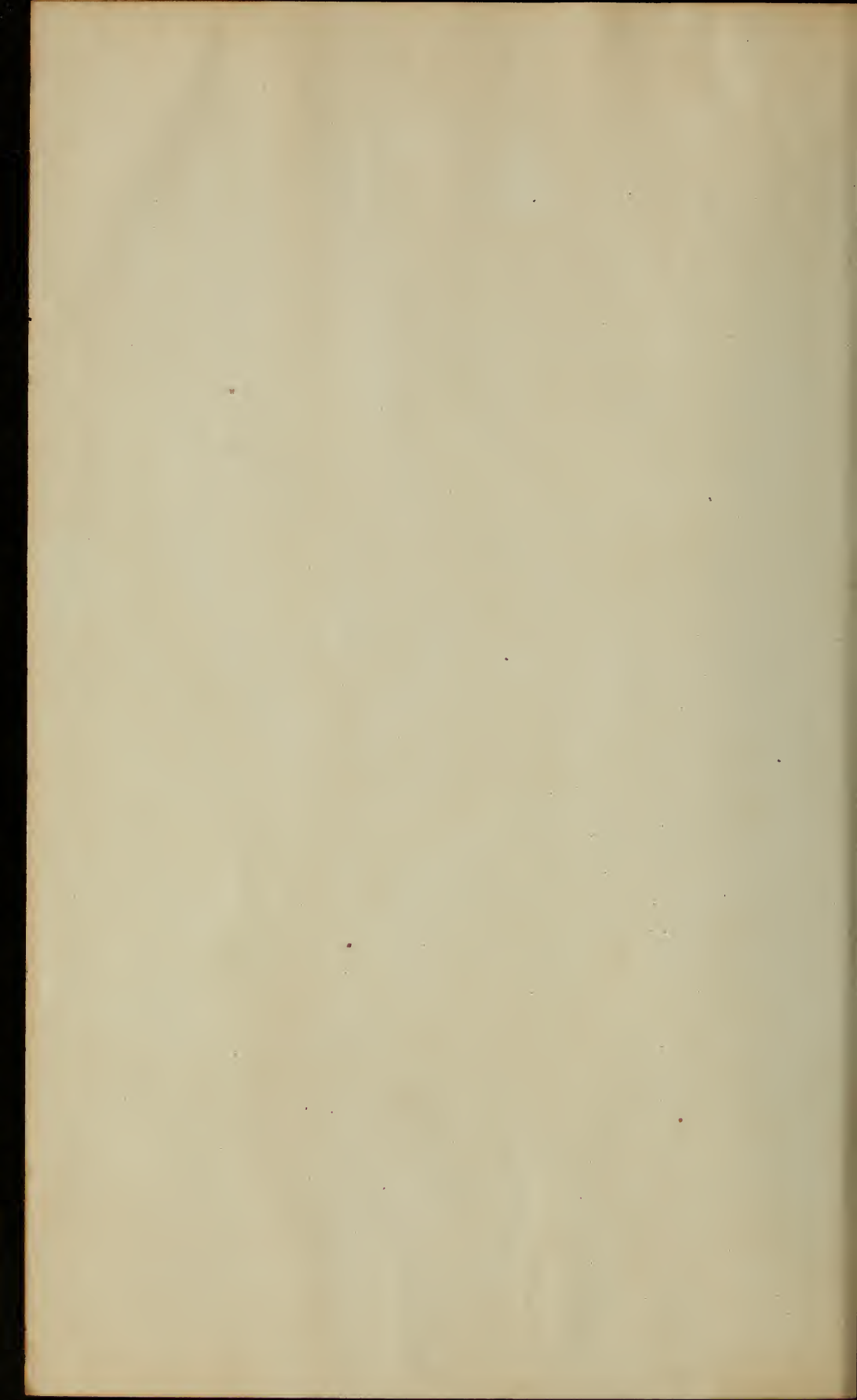
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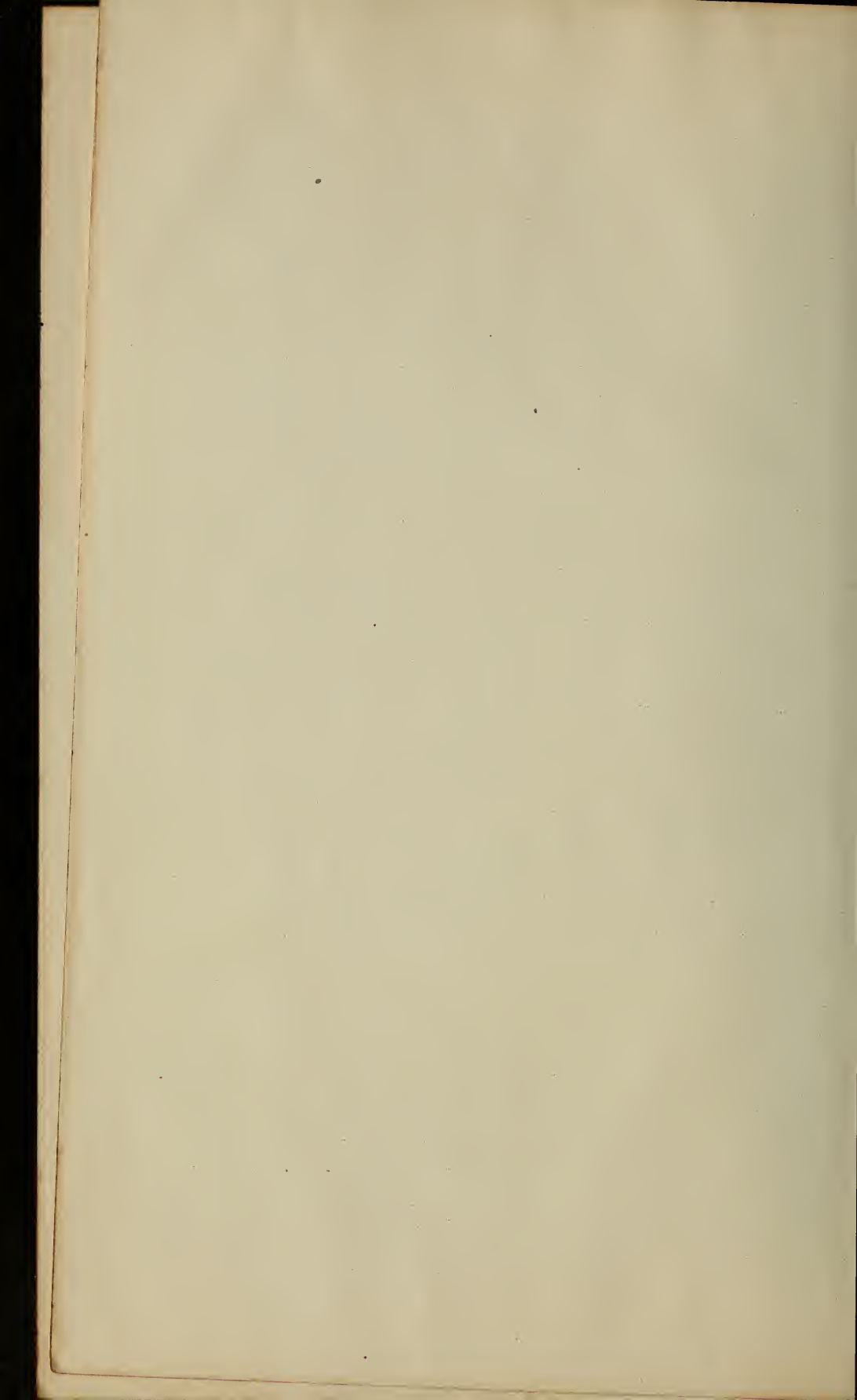




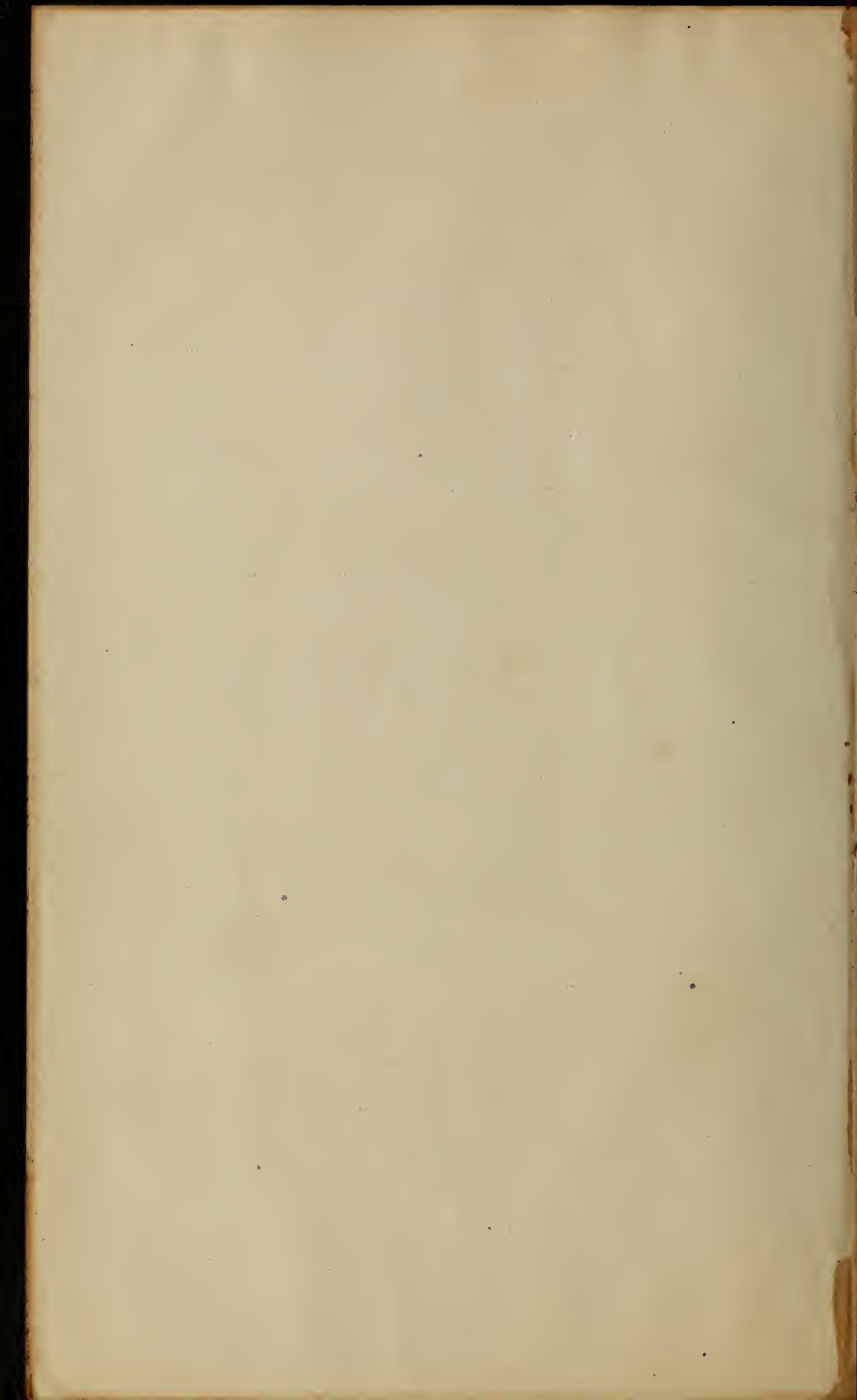














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A  
**REVIEW**

OF THE

**Letter,**

ADDRESSED BY

**WILLIAM ALEXANDER DUER, Esquire,**

TO

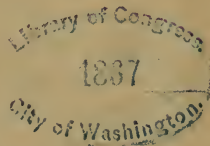
**D.**  
**CADWALLADER COLDEN, Esquire,**

IN ANSWER TO STRICTURES CONTAINED IN HIS "LIFE OF ROBERT FULTON," RELATIVE TO STEAM NAVIGATION.

**WITH AN APPENDIX,**

CONTAINING

**THE ACTS OF THE LEGISLATURE.**



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**NEW YORK.**  
**1818.**

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1793

## REVIEW, &c.

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AT a period so remarkably propitious as the present to internal improvements and the development of the resources of our country, nothing more justly attracts the attention of all classes of the people, than the means whereby our rivers and lakes, and we may say our canals, may, like the ocean, be the medium of reciprocal benefits. These benefits, incalculable in amount, spread into every branch of society. The owner of lands and the cultivator of the soil perceive with joy and exulting patriotism, the changing aspect of the forest; the merchant discerns the augmenting materials of his commerce; the learned professions the increasing numbers of the people and requisition of their guiding talents; and throughout the various mechanic arts, the means of respectable livelihood, and the cheering prospect of wealth.

In this our happy country, flourishing under a mild but strong government, every intelligent mind is elated with the prospect of individual and national prosperity. Vast fields of enterprize unfold to view faster than they can be occupied; and science, genius and industry are encouraged and excited by promised protection, *in the express terms of the constitution.*

Why, then, there should exist in the centre and heart of our country, a monopoly as vast as it is contrary to the spirit of our government, and in violation of its principles; a monopoly, odious because



undeserved and oppressive, occupying the ground and excluding a whole branch of philosophy and mechanics, teeming every day with new discoveries and inventions, the most adapted to the nature and wants of our country, and susceptible of the most important improvements for the benefit of the interior—may well awaken an inquiry into the rights and merits of those who hold this high, this singular, and unconstitutional privilege. And the inquiry is prompted not more by our astonishment at the fact, than by a sincere wish to give *due honour* to the genius and patriotism that deserves the tribute of these immunities.

We have seen the memoir of Mr. Fulton's life, in which the strictures are contained to which Mr. Duer has been called to reply, on the high motives of respect "to public opinion, a sense of duty to those who served with him on the committee, and by every motive and principle of self defence." And the public will feel and acknowledge by their attention to his letter, their obligation for his clear and able exposition of the facts, evidence and principles pertaining to this great question. And it will strike all with surprize, that Mr. Colden should have left so much room, as he seems to have done, for this proper correction. He allows us to suspect, what indeed is confirmed by a more attentive perusal of the memoir, some *ulterior design*, some *effect* on the public, not much unlike the blandishments, which sometimes beguile a jury of an unsound verdict. But the verdict of *public opinion* is not so to be had. No. It is *necessary* to keep up a blaze around the name of Fulton to dazzle as long as may be possible the eyes of the world—But it will prove an *ignis fatuus* to those who follow it too far.

Who is there amongst us unwilling to do ample justice to all the talents Mr. Fulton really possessed? But unqualified and unbounded eulogy, like that of Anthony over the body of Cæsar, leads to

suspicion of some selfish purpose, cloaked beneath the garb of friendship.

It is to be regretted that the writer of the memoir should have forgotten so soon that the tide of time has not yet swept away all the criteria of a fair estimate of the character of Mr. Fulton; and that no one was disposed to pluck from the wings of his fame, even its borrowed plumage, till required to admire them as the growth of his intrinsic worth.

No one denies him the praise of some talents and knowledge in mechanics and the arts, and much for his industry, much for his perseverance. But are not these the common qualities of our countrymen? In mechanic ingenuity, in original invention, and in the art of war, thousands stand before Mr. Fulton, who have not had half his opportunity. To the heroes of our army, and of our navy, we have raised no monuments indeed; but the nation has paid them the tribute of disinterested and genuine admiration. We have not given their names to any ship, or street, for these are honors acceptable only to the vain; but their names are associated in every heart with the scenes of their achievements. The hero of Sandusky need not be named. Orleans is but another name for its defender; and those who sought and fought the foe in every clime, and who laughed, like the sagacious Europeans, at the folly of *torpedo warfare*, will never cease to accompany the glory of their triumphant flag.

If there is however any merit in the device of submarine boats, and exploding apparatus, let Dr. Bushnell (who invented them, and whose account of their operation is to be seen in the Transactions of the American Academy of Arts and Sciences of Philadelphia) have the credit.

Mr. Duer comes forward with *no interest*, *no selfish purpose*. Indignant at injury, and conscious

of the integrity of his heart and the faithful performance of his trust, as chairman of a committee of the legislature, *he* is a *witness* that must be believed by the public. And as a lawyer, his vindication of the principles that governed the committee and led them to the report of a bill to repeal the laws of forfeiture and seizure, unnecessarily, unjustly, and unconstitutionally given to Messrs. Livingston and Fulton, must, we believe, meet the entire approbation of every professional man.

A brief history of the steam-boat monopoly, taken from the documents, and from well known facts, cannot be unacceptable to every one *not interested therein*.

For "boldness of design" we are willing to give Mr. Fulton due credit. It did not involve however any other hazard, than the sacrifice of that modesty which never forsakes real merit, and that self respect which forbids to exceed the limits of right; but it was a *bold design* to carry by storm the entrenchments of the constitution, and thereby trample on the rights of those who stood between. But it was also an *unwise design*, forgetful of the host of defenders who lay within its precincts and sheltered by its canopy.

It may be in the sequel necessary to account for Mr. Fulton's taking out patents it was not pretended he could maintain: For every thing of any use therein, could be found in Savary's experiments as early as 1602, in Symington's in 1801, and in the successful experiments of John Fitch, as early as 1785, who, in 1788, *before the adoption of the Federal Constitution*, obtained grants from New-York, New-Jersey and Pennsylvania, for the exclusive use of steam-boats for fourteen years, as a patent. It is well known the performance of this boat was eight miles an hour, and Gov. Mifflin of Pennsylvania, accompanied by the council and many gentlemen of dis-



unction, made a passage in her, and presented a splendid flag in testimony of approbation.

Mr. Fitch went to France soon after, and there left the drawings and calculations of the steam-boat with the American Consul, Mr. Vail, and returned to America.

*¶ Mr. Vail lent them to Mr. Fulton for some months, as appeared in evidence on a trial subsequently to be mentioned.*

If Chancellor Livingston was entitled to the gratitude of the public for his experiments and expenditures, *though unsuccessful*; all similar failures should be rewarded; and how many of our worthy, ingenious, and enterprising countrymen would have stronger claims on public generosity!!!

But Mr. Livingston's experiments were made after the success of Fitch; made with a knowledge of his grant and patent; made *knowing* that at its expiration it became a *public right*.

But he *thought* he had found a better mode of operation than Fitch's, *and though untried, and unfounded in fact*, he "*suggested*" to the legislature that it was so; and such was his *extraordinary influence*, that, with the help of Dr. Mitchell, this abortive creature of his imagination was, in anticipation of its birth, vested with the spoils of poor Fitch, whose time was not out by four years, nor his patent by five. But for this misfortune, we presume to say, that e'er the expiration of that term, the rising science of Europe would have illumined the solitary path of this real genius, would have led the unfortunate Fitch to success, to honor and just reward. No! this privilege, by the privation of which Fitch may be said to have died in despair, was then taken from him and delivered by the Doctor to Mr. Livingston for the mere asking, and according to his account of it, rather in a *frolic*, and certainly without a single pang of conscience.

There was however a condition annexed to the grant which he did not perform; and it is curious that the *non-performance* was the only foundation of a claim for reiterated indulgence, *and extension of the privilege.*

Mr. Livingston went to Europe, and meeting with Fulton in France, they combined their contrivances. But what let us ask, for we can conceive of no rational answer, what had Mr. Livingston done in 1803 that entitled him and Mr. Fulton to an additional grant of twenty years? For Mr. Livingston's supposed plan had failed, *and it was ten years after the suggestion*, by which he obtained the grant and with all the advantages of European and American experiments, that the first boat reached Albany, and after all not performing so well as Fitch's—and as the committee of the legislature reported, the same in principle.

Mr. Fulton now takes out *his patent* for proportions, inventions and discoveries, including the calculations found in Charnock's Marine Architecture, and in the Encyclopedia, *as for his own inventions.* He was not perhaps aware that readings of this sort and *post-facto discoveries* and *calculations in mathematics* were not patentable by our laws.

We may presume Mr. Fulton was not acquainted with that fact. But as his learned biographer has not explained the motive on which his patents were claimed, we will endeavour to explain what is indeed very obvious; that they answered a certain purpose—the *monopoly was unconstitutional*—the owners of it *must strengthen* themselves by wealth and influence. He *knew* that the name of this patent would sound well beyond the limits of New-York, and possibly *assignments* might be sold for different parts of the United States to considerable profit, especially (as we understand has been the fact) on the Mississippi. Thus the monopoly, the

patent and the wealthy associations formed under it, would, it was expected, *intimidate* from presuming to face them.

But in this they deceived themselves. There is a spirit in our countrymen that prompts them always to a vigorous assertion of their rights—that rouses them to indignation against groundless pretension and arrogant attempts to overawe them.

A company was formed in Albany to run one or more steam boats in defiance of the monopoly, on the question simply of the constitutionality of the grant, advised, we presume, that the expiration of Fitch's Patent had vested the right of running steam boats in the whole people. *They lost their cause, on the principle only, that the state had power to grant a monopoly so long as it should not come into collision with an existing patent under the laws of the United States.* This case is reported at large in Johnston, where the arguments of Mr. Emmet on one side, Mr. Wells and others, as well as the opinions of the Court, seem to establish the doctrine, to use the words of Judge Thompson, confirmed by all the other judges; "In case of collision the State laws must yield to the superior authority of the United States." Still the question of constitutionality remained to be settled in the Supreme Court of the United States by appeal, where it was the opinion of eminent council they would have prevailed. "A compromise however was effected, in pursuance of which Messrs. Livingston and Fulton paid to the association *against whom they had prevailed*, a considerable sum of money upon a purchase of those boats which had already been declared forfeited to their use, and gratuitously ceded to their opponents the exclusive privilege of steam navigation upon Lake Champlain."



We think it was at the period that Van Ingens' boat commenced its operation, that the solicitation of Messrs. Livingston, Fulton, and friends, prevailed in the legislature in 1808 to obtain a law enacting the forfeiture of every steam boat, navigating without their license, and prolonging their term twenty years.

In 1811 the further law was obtained, enacting that the forfeiture should accrue from the first day of her commencing to run, and might be taken possession of as if she had been *wrongfully* taken out of *their* possession.

And in 1812 the cause was decided.

Thus before the cause was tried it was decided in their favour, and, as Mr. Duer says, page 74, "It is rendered imperative upon the Court of Chancery to seize and take it into safe keeping, until the determination of the suit, without the exercise of any discretion in regard to the terms either of issuing or dissolving the injunction; so that the moment a boat has thus *become forfeited*, the representatives of Mess. Livingston and Fulton, to whom an absolute discretion is entrusted as to the granting or refusing of a licence, may take possession of her, *manu forti*, without *execution*, without *judgment*, without *trial*, without *process*, and without *any other law than this statute*. The intervention of a *jury* is dispensed with, and the party claiming possession of the right is rendered *sole judge in his own cause*, and invested with authority to *execute his judgment*, according to his *own uncontrollable discretion*. An officer of the public revenue makes seizures at his peril; but here the powers of government are appropriated to the use of individuals; here the *highest judicial officer* of the State is rendered *ministerially subservient* to the defence of a *private monopoly*. The seizure becomes a *necessary act* of the Court, and the parties

at whose instance and for whose *benefit* it is made, are *protected by the provisions* of the grant from the *consequences of that act*, in case they fail of establishing their claim. To the opposite party these consequences must inevitably prove ruinous. A citizen of the United States, navigating under an authority *superior to that* from which the privilege of his antagonist is derived, can only obtain a legal investigation of his right in our State Courts, *by forfeiting a pledge of great value, whether the decision be against him or in his favour.* The valuable pledge exacted from him is in its nature perishable, but should it happily survive a conquest in chancery, the act, by which the propriety of his boat is in effect transferred to others, contains no provision for its restoration in the event of his success. This indeed is *closing the doors of courts of justice*, and if it be not contrary to that *fundamental statute* to which I have referred (the bill of rights) I must confess my inability to conceive what can be deemed a violation of it." "The great charter of England, from which our statute was transcribed, has ever been regarded in that country from which we derive our system of jurisprudence as the palladium of civil liberty, and the grand land-mark and security of the rights of property!"

Mr. Duer further observes, in answer to the idea of a contract between Livingston and the state: "Were the penalties given them the only effectual sanctions that could have been devised, the *Legislature had no power* to barter the *natural rights* of their constituents in exchange for any public benefit whatsoever, or to reward even genius at the *expense of the constitution.*"

Aaron Ogden, Esq. appears to have been the next to suffer under the *oppression* of the monopoly. This highly respectable man, who, at different periods, has been distinguished by the confidence

of his country, manifested by repeated elections into the first offices, legislative, civil, military and executive, after a youth spent in the line of the army of our revolution, "where he shone with conspicuous lustre," and who was nominated by President Madison to the rank of a major general in the army of the United States; Mr. Ogden, who *would deem* himself degraded by a comparison of his services to his country, his sterling merits, and high and honorable feelings, with those of Mr. Fulton—Even this man is, however, compelled humbly to sue for favour to this favourite of fortune. He was the owner of an ancient ferry between Elizabethtown and New York, in the purchase of which he had invested the earnings of a laborious professional life. The steam boats had taken away his custom, and he wished to set up a *small one* to retain at least some part of it, that he and his family might subsist. He proposed to himself to run his boat to the city of Jersey opposite to New York, and then, to use his own modest language, "to make application to those *entrusted with the power of this State to grant licences*, to run his boat to the city, for which license he made the most liberal offers which he most reasonably supposed would be accepted; but on the contrary, these offers to his great surprise and astonishment were either wholly rejected, or terms offered on the condition of submitting to the *most unparalleled exactions*." Col. Ogden then goes on to shew, that he had taken out a license; that the patent to John Fitch had expired, and that he had purchased of the administrator all the benefits or rights, which might accrue from his invention, and had built a boat on an improved plan *patented to Daniel Dod*, and being thus *constrained* most respectfully to address himself to the Legislature, *because there was no tribunal of law open to him*, prays that it would,



by a further act, declare the laws referred to, not intended to appropriate to the grantees, under the same monopoly, the use of the waters lying immediately between New York and New Jersey, and claimed by the people to be used in common.

It was on this occasion, that the Committee of which Mr. Duer was chairman, heard the parties, Mr. Emmet and Mr. Colden on the part of Livingston, Col. Ogden pleading his own cause.

The arguments urged with great force and propriety by Col. Ogden, are fully detailed by Mr. Duer, and shew conclusively that an exclusive right to steam navigation had been granted to John Fitch in the year 1791 *under his patent* for the invention of the steam boat, emanating from competent and paramount authority, and the title derived under the State law *being subsequent* was, upon obvious principles, therefore, *void*. After his premises, followed a conclusive argument on the unreasonable, unnecessary, disproportionate and oppressive remedy in law, of *forfeiture and seizure*, without responsibility for damage, and without the possibility of recompense, all which Col. Ogden insisted, was manifestly contrary to the first principles of justice, and in violation of the spirit, if not of the letter of *the bill of rights*.

Mr. Duer, page 27, speaks of the feelings of the committee after hearing the proofs and allegations of the parties, and ably justifies their reasoning and their conclusions, on a full consideration of the powers, both of the general and state governments.

He says, "The enlightened men who framed the constitution of the United States, introduced an article into that instrument, vesting in the Congress, a power by which they might facilitate the transmission of discovery to future times, and provide a reasonable period for the exclusive enjoyment, by authors and inventors, of their productions: *thus harmonizing the demands of genius with the claims*

*and interests of the public.* The constitution accordingly declares, 'that the Congress shall have power to promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.' In execution of which power, two acts of Congress have been passed, *and are now in force."*

The reasoning of Mr. Duer, leads to the necessary conclusion, that the power vested in Congress is *necessarily exclusive*, or it could not *secure* to an inventor *an exclusive right*. And that *the restriction to a limited time*, was manifestly for the benefit of *the public*. He then proceeds to shew: "That in the instance before us the very ground upon which invention is to work is seized and preoccupied; and an exclusive privilege is granted, which not only prevents the future reward of security to inventors, but in one important region, would stop the progress of discovery itself. The very elements by which improvements can be made are monopolized, and a *bold attempt* is successfully made, to exclude Congress from all opportunity of exercising the power given to them *by the constitution*. If this can be done by one state in relation to any one subject, why may it not be done by all, in relation to all? How is a line of discrimination to be drawn?"

The committee, after this thorough investigation, made their report of facts; recommended a bill to repeal those of 1808 and 1811, but leaving the grant as it previously stood protected by the common law. *The bill passed the House of Assembly*, but was stopt in the Senate!!!!

The encroachment on the rights of New-Jersey, awakened the resentment of that state, and the legislature determined it seems to protect their rights in those of Col. Ogden, and as Livingston and Fulton had granted to John R. Livingston, Esq. the

exclusive right to run a boat to Brunswick : New-Jersey prohibited this boat until New-York should admit the citizens of Jersey to partake in the navigation of the Hudson. To procure the repeal of this law, an application was made to the legislature ; and a hearing of the parties took place by council, memorable for the talents, the eloquence and the acrimony displayed.

*In this trial a great variety of evidence, as well as John Fitch's original journal, was brought forward to prove that Mr. Fulton had no claim to originality of invention : Indeed this was conceded by his council. It was on this occasion that the copy of a letter from Mr. Fulton to Lord Stanhope was so much relied on to prove that he had the merit of a certain discovery.\**

In the history of the case it is said “ of this important document there was no proof but the uncorroborated allegation of Mr. Fulton ; and when the writing produced as the original draft of the letter which was said to have been written from Torbay by Mr. Fulton to Lord Stanhope *was inspected*, it was found by the water mark to be on American paper. This extraordinary circumstance, after it had excited observation by the development of this discovery, was accounted for by a statement that it was a copy *recently* taken of the first copy, which had been burned by Mr. Fulton. Under these circumstances Mr. Hopkinson said, that he must be excused for suggesting to Mr. Fulton that if he could possibly procure the original letter written to Lord Stanhope, he could assure him, it would be of immense importance to him, and well worth a voyage across the Atlantic to obtain.”

Mr. Emmet in a note, page 116 of Mr. Colden's book, endeavours to explain this occurrence so as

\* See a history of the Steam Boat case. Trenton, 1815.



to obviate the impression it then made on the audience. But he fails to make the impression on our mind that he designs. From the importance given to it, the best explanation is the facts as they took place. From them every one can judge and conclude. A drawing and letter were produced annexed and bearing date 1793, with Mr. Fulton's signature and that of a witness—The *recent* copy of that original draft which Mr. Fulton burnt was allowed to pass in evidence, as an original and attested document: And Mr. Emmet says, "We proceeded to some other part of our case—— He was interrupted, it seems, some time after by Mr. Fulton, who "whispered to him that there "was a circumstance respecting Lord Stanhope's "letter that had escaped his memory." Now what must have been the state of his mind? Was he attending to the other part of the case with Mr. Emmet, or was he attentive to the movements of the opposite party? Or was he conscious of the truth? The fact was, the opposite party actually made the discovery, by *inspection*, in his presence—Water lines cannot be seen in paper unless it be held to the light—The *discovery* was made before Mr. Fulton whispered his recollection to Mr. Emmet; for Mr. Emmet says, he *immediately* rose to ask permission of the Assembly to re-examine Mr. Fulton to this point, which, when he had done, Gov. Ogden said, "he was glad Mr. Fulton had given the explanation, because *he had discovered* the letter was written on American paper. We believe Mr. Emmet that *he* did not, but we must be excused if *we* do not equally believe with him, that Mr. Fulton, to use the words of Mr. Emmet's letter, "did not observe any thing in the conduct or "examination of the letter and drawings by the "opposite party to excite apprehension or suspicion that a discovery had been made."

In this trial it was conceded by the council of Mr. Fulton,\* that he did not claim to be an inventor, "but by the *combination* of simple powers and "things discovered *by others* he had effected an ag- "gregate, &c. &c. Mr. Southard said in reply, he "was at a loss (as he believed was the case with "many others) to apprehend where these mechan- "ical combinations were to be found; but he could "plainly see certain combinations for which Messrs. "Livingston and Fulton had been conspicuously "famous, and which operated much to their own "aggrandizement through the oppression of his "client and other honest citizens of New-Jersey. "This was a combination of gold, of influence, of "intrigue, and of powerful connexions. These "were the combinations that formed the *merits* of "his adversaries."

Happily for the public, because on record, this trial proved to be a thorough investigation of the merits of the respective parties. Mr. Hopkinson, in a speech of many hours, discussed all the evidence and principles, which went to prove that Messrs. Livingston and Fulton had no grounds whatever to their pretensions, as inventors, compilers, or monopolists; and we say happily for the public, because the proofs of it are thereby at hand.

The *result* of this trial was however contrary to all reasonable expectation. In the printed account of it, it is said, "The event proved that those of "us who so confidently calculated on the assertion "of the rights of the state by the present legis- "lature were but little acquainted with the arti- "fices of those master spirits who were the arch "jugglers behind the curtain. The conclusion of "the arguments was succeeded by a scene of intrigu- "ing manœuvres, importunate solicitations, and joint "meeting bargains which totally baffles all powers of

\* Mr. Emett.

"description." The act was repealed, the rights of the people in this instance, and those of Gov. Ogden sacrificed, though he had generously refused a compromise that would have given him personally the exclusive right to the ferry if he would have bowed down to the Moloch of their monopoly. But we presume, to avoid further litigation and appeal, they have yielded him the right to his ancient ferry, which he now enjoys, leaving the people of New-Jersey to be reconciled to the legislature as they may.

— Let us pause a moment to consider the extent and effect of the monopoly: and look into its operation on the interests of the community and especially as it will affect *the interior of our state*.

We have seen, the act of 1798 granted the monopoly for twenty years. April 1803, extended the grant for twenty years from that date. In 1807, the act of 1803 was extended for two years, to exhibit the proofs. The ensuing summer a boat was run. In April 1808, notwithstanding the monopoly had yet fifteen years to run, after all this indulgence, it was enacted on the petition of Messrs. Livingston and Fulton, that whenever they should establish one or more steam-boats, they should for each such additional steam-boat be entitled to *five year's prolongation of their grant*, provided that the whole term of their exclusive privilege should not exceed *thirty years* from the passing of that act.

*Thus thirty years from 1808, leaves yet twenty years of exclusion not only to all the improvements that have been made in this region of mechanicks for twenty years past, but for twenty years to come, when almost every man, now in the vigour of life, who might avail himself of internal improvements in agriculture springing from, and connected with the improving means of navigating the waters of the State of New-York, to increase his property and provide for his family, will*



*have passed through the best portion of his days, deprived of his natural rights.*

A stranger to the history we have unfolded, if made acquainted for the first time with *the existing fact only*, would be led to ask what *crime* the people of New-York had committed that *the government thought proper thus to punish?*

While the Mississippi is alive with the freighted products of the soil of Ohio, borne on her vast extent and driven by an agent the most powerful in nature, and supplied in returning with every foreign commodity;—While the Savannah in like manner bears her rich burdens, and the waters of Carolina and Virginia, are facilitating the business and advancing the prosperity of these States;—Why is New-York, possessing the noblest river and the greatest waters in America, confined for twenty years to come, (and who can say it may not be an hundred) to mere passage boats? The answer is, the monopoly. Again it is asked, why the various improvements patented under the laws of the United States, are not to be known in New-York? The monopoly excludes them. And worse still; *will exclude* every thing that ingenuity can devise and discover, *so long as it continues*. We have seen this effect already. At the last session, it appears by the appendix to the letter of Mr. Duer, that several claims have arisen, and “one upon new and peculiarly formidable grounds.” A Mr. Sullivan, patentee of improvements in steam navigation, petitioned the legislature for the repeal of the confiscating laws, in order that he might *at least* have the privilege of trying the right of Mr. Fulton in a court of law, after having, it seems, sustained a controversy with him respecting his patent, *which was decided against Mr. Fulton, by an arbitrament appointed by the Secretary of State, Mr. Munroe*. It appears that Mr. Fulton did not

pretend that this improvement, called the steam tow boat, was in either of his patents, and certainly was not contemplated or thought of in the monopoly, and yet it seems Mr. Sullivan is excluded from this state, to which he has as good a right, as to any part of the union. And what is of more consequence, the state is deprived of his improvement; which we have heard he has established at the southward, and in New-Hampshire, to much advantage.

If this improvement is really *so immensely valuable* to the community, as Mr. Fulton himself considered it, why should *this community* be deprived of its use? If it is calculated for our small lakes, future canals, and river navigation, can there be any sound reason why the people should not have the use of it? Yes! the great monopoly, granted to reward the *merits* of Mr. Livingston and Mr. Fulton, must swallow this and all similar patents, the rights of individuals and the constitution, notwithstanding.

We cannot too highly recommend the letter of Mr. Duer. Its perspicuity of style and force of reasoning gives complete satisfaction, and his friends *must feel that his honorable object is accomplished*; and although we do not fully coincide with him that the grant should be allowed to stand on the ground it held before the acts of 1808 and 1811, but ought rather to be repealed *in toto*, as founded in error, misrepresentation, and injurious both to public and private rights, incompatible with the constitution, and the nature and principles of our government; *yet we must give him credit for the good feelings which lead him to stop short of the legitimate conclusions from his own premises.* And we gladly recognize the man of high honor and firm principle, in the language of the conclusion of his letter, in which he says, "Whether a deliberate scheme has been sys-

“tematically pursued for extending the advantage  
 “of the exclusive privileges to certain men of wealth  
 “and influence amongst us, I will not undertake to  
 “say; but if such a plan actually exist, and be  
 “steadily persevered in, if it include the leaders of  
 “our great political parties, the ablest advocates at  
 “the bar, persons in authority, and men who are,  
 “or who expect to be members of the different  
 “branches of the government;—an influence may  
 “soon be united, powerful enough not merely to  
 “prevent the repeal of the statutes by which this  
 “monopoly is guarded; but to insure its *renewal* at  
 “the expiration of the period to which it is at pre-  
 “sent limited.

“*Combinations of this description*, however respec-  
 “table the individuals who project them, however  
 “justifiable the end for which they are formed, (or  
 “he might have said *seem* to be formed,) and how-  
 “ever honest the intentions of those of whom they  
 “are composed, *are injurious to the reputation of the*  
 “*state*, subversive of the independence and purity  
 “of legislation, and *dangerous to the existence of a*  
 “*government founded, like ours, upon enlightened*  
 “*principles of freedom*: And I trust I may be per-  
 “mitted to observe, that men in public stations  
 “should remember that their most durable as well  
 “as honorable influence, springs from a general  
 “confidence in their integrity. With all due sub-  
 “mission I would ask, whether it would become  
 “those who hold situations of peculiar responsibili-  
 “ty and dignity in the state, so far to lend them-  
 “selves to the selfish purposes of others, as to sub-  
 “ject their own characters to injurious suspicion.

“And in reference to the present subject I would  
 “suggest to those who are possessed of wealth,  
 “the impolicy of an example *from them* which con-  
 “founds the distinction between laws passed to fa-  
 “vor *the accumulation* of money, and those en-



acted for the security of property. Some future legislature, indignant at their resistance to a judicial examination of their claim, may make an undistinguishing repeal of the whole."

And we may add our belief, that the time is not remote, when public opinion will pronounce *an unequivocal disapprobation of the whole system*, by which to use the words of Mr. Duer, "the rights of patentees, the common rights of our citizens, and not only the ordinary rules of justice, but the fundamental principles of our government, are proscribed and sacrificed that their monopoly may be guarded."

These are not the sentiments of a single individual, they are likewise those of all honest and intelligent People.

## APPENDIX.

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*An Act for granting and securing to John Fitch the sole right and advantage of making and employing for a limited time the Steam Boat by him lately invented.*

Passed 19th of March, 1787.

WHEREAS John Fitch, of Bucks county, in the state of Pennsylvania, hath represented to the legislature of this state, that he hath constructed an easy and expeditious method of impelling boats through the water by the force of steam, praying that an act may pass, granting to him, his executors, administrators, and assigns, the sole and exclusive right of making, employing and navigating all boats impelled by the force of steam or fire, within the jurisdiction of this state, for a limited time: *Wherefore*, in order to promote and encourage so useful an improvement and discovery, and as a reward for his ingenuity, application, and diligence—

I. *Be it enacted by the people of the state of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That the said John Fitch, his heirs, executors, administrators, and assigns, shall be, and they are hereby vested with the sole and exclusive right and privilege of constructing, making, using, employing and navigating all and every species or kind of boats, or water craft, which may be urged or impelled though the water by the force of fire or steam, in all creeks, rivers, bays and waters whatsoever, within the territory and jurisdiction of this state, for and during the full end and term of fourteen years from and after the present session of the legislature.

II. *And be it further enacted by the authority aforesaid,* That if any person or persons whomsoever, without being properly authorised by him the said John Fitch, his heirs, executors or administrators, shall make, use, employ or navigate any boat or water craft, which shall or may be urged, impelled, forced or driven through the water by the force, power, or agency, of fire or steam as aforesaid, within the territory or jurisdiction of this state, every person or persons so offending against the tenor, true intent and meaning of this act, for each and every such offence, shall forfeit and pay unto the said John Fitch, his heirs, executors or administrators, or to such other person or persons, as he the said John Fitch, his heirs or assigns, shall authorise and empower for that purpose, the sum of one hundred pounds, to be recovered by action of debt, in any court of record within this state, whenever the same may be cognizable, with costs of suit; and shall also forfeit to him the said John Fitch, his heirs or assigns, all such boats or water craft, together with the steam engine, and all the appurtenances thereof, to be recovered in manner aforesaid, with costs of suit.

III. *Provided always, and be it further enacted by the authority aforesaid, That neither this act, nor any clause, matter or thing therein contained shall be taken, deemed or construed to prohibit or prevent any person or persons from making, using, employing or navigating, within this state, any kind of boats or water craft heretofore invented or hereafter to be invented on any other principles, construction or model, which may be urged, impelled, or driven along through the water, by any other power, force, agency, or means, except fire or steam.*

*An Act repealing an act, entitled "an act for granting and securing to John Fitch the sole right and advantage of making and employing the Steam Boat by him lately invented," and for other purposes.*

Passed March 27th, 1798.

Whereas it hath been suggested to the people of this state, represented in Senate and Assembly, that Robert R. Livingston is possessor of a mode of applying the Steam Engine to propel a boat on new and advantageous principles, but that he is deterred from carrying the same into effect by the existence of a law, entitled "an act for granting and securing to John Fitch the sole right and advantage of making and employing the steam boat by him lately invented, passed the nineteenth day of March, one thousand seven hundred and eighty-seven," as well as by the uncertainty and hazard of a very expensive experiment, unless he could be assured of the exclusive advantage of the same, if on trial it should be found to succeed: *And whereas* it is further suggested, that the said John Fitch is either dead or hath withdrawn himself from the state, without having made any attempt in the space of more than ten years, for executing the plan for which he so obtained an exclusive privilege, whereby the same is justly forfeited: Therefore,

I. *Be it enacted by the people of the state of New-York, represented in Senate and Assembly, That the act aforesaid be and is hereby repealed; and to the end that Robert R. Livingston may be induced to proceed in an experiment which, if successful, promises important advantages to this state,*

II. *Be it further enacted, That privileges similar to those granted to the said John Fitch, in and by the before mentioned act, be and they are hereby extended to the said Robert for the term of twenty years from the passing of this act: Provided nevertheless, that the said Robert shall, within twelve months from the passing of this act, give such proof as shall satisfy the Governor, the Lieutenant-Governor, and the Surveyor General of this state, or a majority of them, of his having built a boat of at least twenty tons capacity, which is propelled by steam, and the mean of whose progress through the water with and against the ordinary current of Hudson's river taken together, shall not be less than four miles an hour, and shall at no time omit for the space of one year to have a boat of such construction plying between the cities of New-York and Albany.*

*At a Meeting of the Council of Revision, held at the City Hall of the city of Albany, on Friday the 23d day of March, 1798.*

PRESENT—

His Excellency the GOVERNOR,  
The Hon. { The CHIEF JUSTICE,  
              { Judge LEWIS,  
              { Judge BENSON.

Judge Benson, to whom was committed the Bill, entitled "an act repealing an act, entitled "an act for granting and securing to John Fitch the sole right and advantage of making and employing the Steam Boat by



him lately invented, and for other purposes," reported certain objections thereto, which being duly considered, were approved of; and thereupon the Council object to the said Bill as improper to become a Law. Because the grant of the privileges to Robert R. Livingston, intended by the Bill, supposes that the similar privileges which were granted to John Fitch by the act thereby to be repealed had become forfeited: whereas it doth not appear that the facts from which such forfeiture is to arise have been found in some due course of law.

JOHN JAY.

*An Act for continuing in force an act entitled "An Act repealing an act entitled 'An Act for granting and securing to John Fitch, the sole right and advantage of making and employing the Steam Boat by him lately invented,' and for other purposes."*

Passed 29th March, 1799.

WHEREAS Nicholas I. Roosevelt hath by his petition, set forth that in virtue of an act entitled "An Act repealing an act entitled 'An Act for granting and securing to John Fitch, the sole right and advantage of making and employing the Steam Boat by him lately invented,' and for other purposes," he hath together with his associates expended a very considerable sum of money in endeavouring to effect the objects of the said act, but that from various unavoidable accidents, he and his associates have not been able to comply with the conditions therein contained, though he has reason to hope that the same may be effected if sufficient time is for that purpose afforded, and praying that in consideration of their great expense, and the extreme utility of the object, no advantage may be taken of their non-compliance with the condition in the said law contained, but that the said law may be continued in force for twenty years from the first day of June next; *Provided* the conditions therein contained are fulfilled within two years from the first day of June next; which Petition appearing just and reasonable, and being agreed to by the person for whose benefit the said Act was passed.

*Be it enacted by the People of the State of New-York, represented in Senate and Assembly,* That the Act aforesaid shall be and is hereby continued in force for twenty years from the first day of June next. *Provided nevertheless,* that the several conditions in the said Act contained are complied with in manner as in and by the said Act is directed, within two years from the first day of June next.

*And be it further enacted,* That Nicholas I. Roosevelt, and the several persons associated with him, be entitled to the privileges and benefits resulting from the said Act, in proportion to the advances they have heretofore made, and the shares they severally hold in the works already erected.

*An Act relative to a Steam Boat.*

Passed April 5th, 1803.

*Be it enacted by the People of the State of New-York, represented in Senate and Assembly,* That the rights, privileges, and advantages, granted to Robert R. Livingston, in and by the act entitled "An act repealing an act granting and securing to John Fitch the sole right and advantage of making and employing the Steam Boat, by him lately invented, and for other purposes," passed the twenty-seventh day of March, one thousand seven hundred and ninety eight, be extended to Robert R. Livingston and Robert Fulton, for the term of twenty years from the passing of this act, and that the term for giving the necessary proof of the practicability of a boat of twenty tons capacity, being propelled by steam through the water,

with and against the ordinary current of Hudson River, taken together, four miles an hour, be and the same is hereby extended to two years from the passing of this act.

*An Act to revive an Act, entitled "An act relative to a Steam Boat."*

Passed April 6th, 1807.

*Be it enacted by the People of the State of New York, represented in Senate and Assembly, That the act, entitled "An act relative to a steam boat," passed the fifth day of April, one thousand eight hundred and three, be and the same is hereby extended for the term of two years from the passing of this act, to exhibit the proofs therein required.*

*An Act for the further encouragement of Steam Boats, on the Waters of this State, and for other purposes.*

Passed April 11th, 1808.

I. *Be it enacted by the People of the State of New York, represented in Senate and Assembly, That whenever Robert R. Livingston and Robert Fulton, and such persons as they may associate with them, shall establish one or more Steam Boats or vessels, other than that already established, they shall, for each and every such additional boat, be entitled to five years prolongation of their grant or contract with this State. Provided nevertheless, that the whole term of their exclusive privileges shall not exceed thirty years after the passage of this act.*

II. *And be it further enacted, That no person or persons, without the license of the persons entitled to an exclusive right to navigate the waters of this state, with boats moved by steam or fire, or those holding a major part of the interest in such privilege, shall set in motion or navigate, upon the waters of this state, or within the jurisdiction thereof, any boat or vessel moved by steam or fire; and the said person or persons, so navigating with boats or vessels, moved by steam or fire, in contravention of the exclusive right of the said Robert R. Livingston and Robert Fulton, and their associates, or legal representatives, shall forfeit such boat, or boats and vessels, together with the engine, tackle and apparel thereof, to the said Robert R. Livingston and Robert Fulton, and their associates.*

III. *And be it further enacted, That the penalties so incurred may be sued for and recovered, within any court of record of this state, having cognizance thereof.*

IV. *And be it further enacted, That if any persons shall combine for the purpose of injuring or destroying any boat, sloop or other vessel navigating the waters of this state; and if any persons shall wilfully, and with the express intention to destroy or injure such boat, sloop or vessel, and thereby put in danger the lives of the passengers, or people navigating such boat, sloop, or other vessel; the persons so combining, or the persons so wilfully attempting to injure or destroy such boat, sloop, or other vessel, shall respectively be considered guilty of a misdemeanor, and on conviction, shall be fined in a sum not exceeding two thousand dollars, or imprisoned for a time not exceeding twelve months, or both, in discretion of the court before whom such conviction takes place.*

*An Act for the more effectual enforcement of the Provisions contained in an Act, entitled "An Act for the further encouragement of steam boats on the waters of this State, and for other purposes."*

Passed April 9th, 1811.

*Be it enacted by the People of the State of New-York, represented in Senate and Assembly, That the several forfeitures mentioned in the Act, entitled "An Act for the further encouragement of Steam Boats on the*

waters of this State, and for other purposes," passed the eleventh day of April, one thousand eight hundred and eight, shall be deemed to accrue on the day on which any boat or boats, moved by steam or fire, not navigating under the license of Robert R. Livingston and Robert Fulton, their associates or assigns, shall navigate any of the waters of this State, or those within its jurisdiction, in contravention of the said act; and that Robert R. Livingston and Robert Fulton, their associates and assigns, shall and may be entitled to the same remedy, both in law and equity, for the recovery of the said boat and engine, or boats and engines, tackle and apparel, as if the same had been tortiously and wrongfully taken out of their possession.

*And be it further enacted,* That when any writ, suit or action is brought for the recovery of such forfeitures, the defendant or defendants to such writ, suit, or action, the captain, mariners, and others employed in so navigating in contravention of the said law, shall be prohibited by writ of injunction from navigating with or employing the said boat or boats, engine or engines, or from removing the same or any part thereof, out of the jurisdiction of the court, or to any place than that which shall be directed for their safe keeping by the court, during the pendency of such suit or suits, action or actions, or after judgment shall be obtained, if such judgment shall be against the defendants, or the matter or thing forfeited.

*And be it further enacted,* That when the plaintiffs shall elect to sue out an injunction, the court granting the same shall impose upon them such rules as may appear just and proper, to prevent unnecessary delays in bringing such suit to issue and trial. *Provided always,* That nothing in this act shall be deemed or construed to extend or apply to the two boats or vessels commonly called Steam Boats, belonging to Hamilton Boyd, Isaiah Townsend, Robert R. Henry, and their associates, or to the captain, mariners, and others, employed in navigating the same, which boats or vessels were lately launched at the city of Albany; nor to the Steam Boat which, during the last summer, plied on Lake Champlain, and is said to belong to James Winants, and his associates, or to the captain, mariners, or others employed in navigating the same; but in regard to the said three boats or vessels, the said Robert R. Livingston and Robert Fulton, and their associates or assigns, shall have and enjoy all the remedies heretofore provided in and by, or resulting from any former law or laws of this State, and the relative rights and remedies of the respective parties in relation to the three boats or vessels above mentioned, shall be and remain as if this act had not been passed.

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THESE may certify, that the subscriber has frequently seen Mr. Fitch's Steam Boat, which with great labour and perseverance he has at length completed; and has likewise been on board when the boat was worked against both wind and tide, with a very considerable degree of velocity, by the force of Steam only.

Mr. Fitch's merit in constructing a good Steam Engine, and applying it to so useful a purpose, will no doubt meet with the encouragement it so justly deserves, from the generosity of his countrymen, especially those who wish to promote every improvement of the useful arts in America.

DAVID RITTENHOUSE.

PHILADELPHIA, Dec. 12, 1787:

HAVING also seen the Boat urged by the force of Steam, and having been on board of it when in motion, I concur in the above opinion of Mr. Fitch's merits.

JOHN EWING.





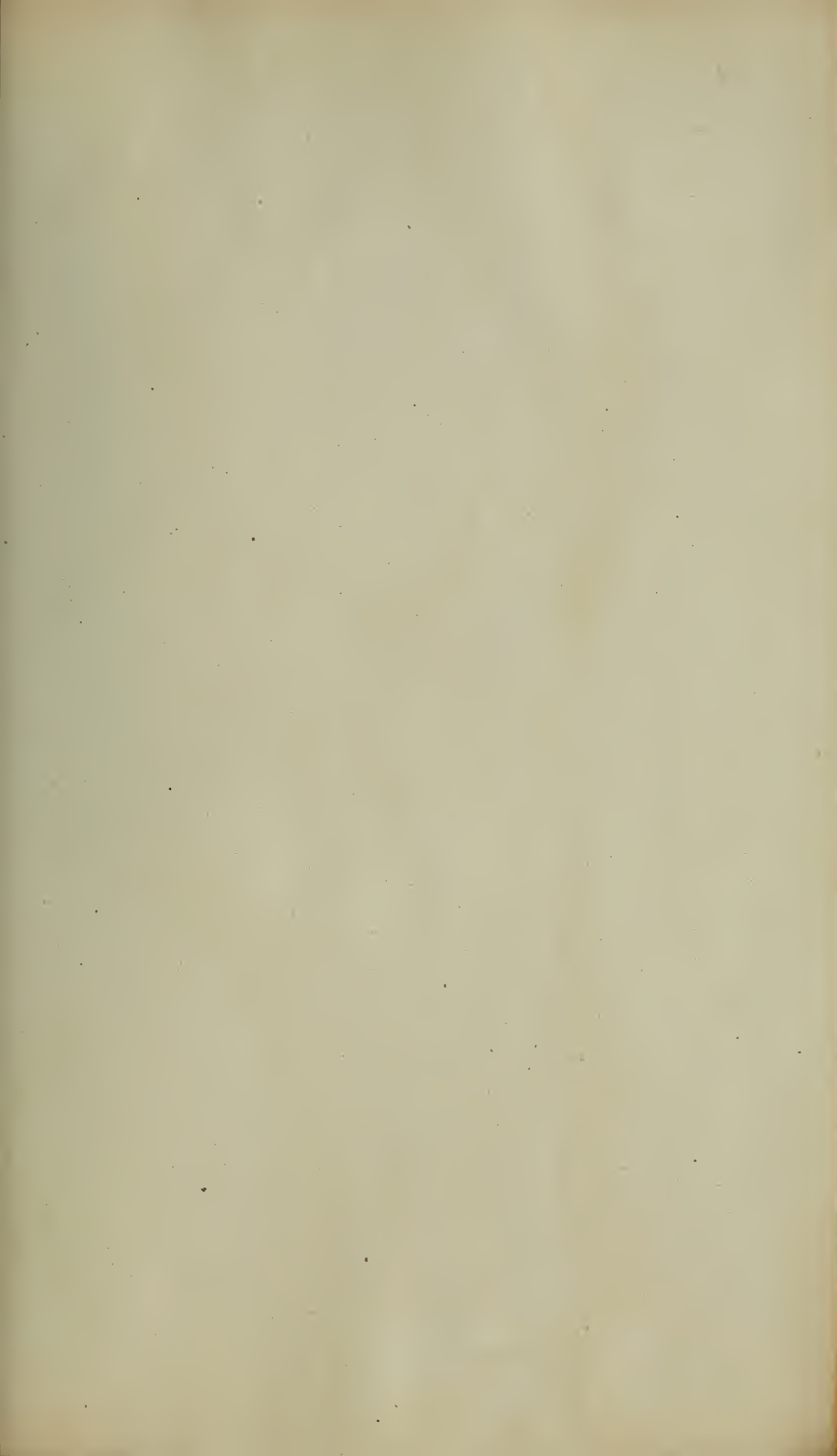






















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